
DIGEST

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N. Gautreaux

SB No. 91

Proposed law provides that the owner of a qualified energy system will be allowed a credit against income and corporation franchise tax of up to 25% of the amount of "eligible costs and expenses" incurred by the owner of a "qualified energy system," provided that the credit earned with respect to a single qualified energy system cannot exceed \$450,000. No credits may be granted after December 31, 2012 although they may still be transferred or carried forward after that date.

"Eligible costs and expenses" is defined as the depreciable and amortizable costs and expenses attributable to the construction or installation of a qualified energy system located in this state.

"Qualified energy system is defined as a system of apparatus and equipment located in this state which uses a "qualified energy resource" to produce energy and to transfer such energy to the point of use or storage, but also specifically includes as a qualified energy resource "closed-loop biomass" or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

"Qualified energy resource" means a qualified energy resource as defined in 26 USC 45 of the IRC, which in general is defined as the following energy resources which qualify for the renewable energy federal tax credit in that law:

1. Wind.
2. Closed-loop biomass, meaning any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.
3. Open-loop biomass, meaning any agricultural livestock waste nutrients or any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from certain forest or agricultural sources.
4. Geothermal energy.
5. Solar energy.
6. Small irrigation power, meaning power generated without any dam or impoundment of water through an irrigation system canal or ditch, and the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.
7. Municipal solid waste.
8. Qualified hydropower production from certain hydroelectric dams and "nonhydroelectric dams."
9. Marine and hydrokinetic renewable energy, meaning energy derived from waves, tides, and currents in oceans, estuaries, and tidal areas, free flowing water in rivers, lakes, and streams, free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or differentials in ocean temperature (ocean thermal energy conversion).

Proposed law provides that the tax credit is earned only in the year in which the qualified energy system is placed in service.

Proposed law provides that the tax credit will be allowed against the income tax for the taxable period in which the credit is earned and against the franchise tax for the taxable period following the taxable period in which the credit is earned. Further provides that any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 5 years, and the credit may be used in addition to any federal tax credit.

Proposed law provides that any taxpayer may elect to transfer or sell their unused tax credits and the credits may be transferred or sold only twice. Further provides that a single transfer or sale may involve one or more transferees.

Proposed law provides that the transfer or sale of the credit does not extend the carry forward period of the credit.

Proposed law provides that the transferors and transferees must submit to the department in writing a notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. Further provides the information that must be included in the notification and that failure to provide such information will result in the disallowance of the tax credit until the parties provide the required information.

Proposed law requires prior to any taxpayer claiming or transferring a credit, the department must issue a tax credit certificate providing for an amount of credits earned in connection with a qualified energy system. Further provides what information must be provided to the department in order to issue the certificate.

Proposed law provides that the owner of a qualified energy system cannot receive a credit authorized under R.S. 47:6030 [the wind or solar energy systems tax credit] for which the owner of such qualified energy system has received a credit under the proposed law.

Proposed law provides how the credits may be claimed by various taxpayers.

Proposed law requires the secretary of the Dept. of Natural Resources to administer the credit and, in conjunction with the Dept. of Revenue, the Dept. of Natural Resources, and the Dept. of Environmental Quality, to promulgate such rules and regulations as may be necessary to carry out the provisions of proposed law.

Proposed law prohibits tax credits from being issued except to the extent that federal funds from the American Recovery and Reinvestment Act of 2009 or another federal government program have been allocated to the state to fund the tax credits authorized in proposed law. Further provides that the department shall issue tax credits on a first come, first serve basis but in no event shall the total amount of tax credits exceed the amount of federal funds allocated for such purposes.

Applicable to costs and expenses incurred on and after January 1, 2009.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6035)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Changes the cap on the total amount of credits that can be earned by a single system from \$3.75 million to \$450,000 and prohibits credits from being granted after December 31, 2012 (although they may still be transferred or carried forward after that date).
2. Changes the credit from one allowed for a qualified energy "resource" as defined in federal law to one allowed for a qualified energy "system" - defined as a system of apparatus and equipment located in this state which uses such a qualified energy resource to produce electricity and to transfer such electricity to the point of use or storage, but also includes as a qualified energy resource "closed-loop biomass" or biomass burned in conjunction

with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

3. Changes the administrator of the credit from the Department of Revenue to the Department of Natural Resources.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the reengrossed bill.

1. Adds authority for the Dept. of Natural Resources and the Dept. of Environmental Quality to promulgate rules and regulations in conjunction with the Dept. of Revenue.
2. Adds prohibition that no tax credits shall be issued under proposed law except to the extent federal funds from the American Recovery and Reinvestment Act of 2009 or another federal government program have been allocated to the state to fund the tax credits. Prohibits the total amount of tax credits to exceed the amount of federal funds allocated for such purposes.